

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1683.01
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: February 8, 2001
DATE OF REPORT: March 21, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 15, 2001

COMPLAINT ISSUES:

Whether the Clarksville Community School Corporation and the Greater Clark County Special Education violated:

511 IAC 7-27-9(b) with regard to the school's alleged failure to make available to a student with a disability the variety of educational and noneducational programs and services that are made available to nondisabled students, specifically, recess, physical education, and lunch.

The due date for this report was extended from March 9, 2001, to March 23, 2001, in order to obtain additional information from the local director of special education.

FINDINGS OF FACT:

1. The student (the "Student") is ten years old and in the fourth grade at the School. The Student is eligible for special education and related services as a student with an other health impairment ("OHI").
2. The complainant (the "Complainant") contends that the Student is punished on an almost daily basis for his behavior by not being allowed to attend recess, and must spend the recess period in the resource room. The Complainant also asserts that the Student is punished by denying his participation in the weekly physical education class. Although he attends the physical education class, he must sit and watch while the other students participate. The Complainant further contends that the Student has had to eat his lunch in the resource room approximately 5 times this school year as a result of his behavior difficulties.
3. The Student's *IEP* dated February 3, 2000, states that the Student is in a general education classroom with resource for one period per day. The *IEP* also states "When totally unfocused [Student] may require time within the resource classroom."
4. The Student's annual case review (the "ACR") was held on February 13, 2001, and the *IEP* was revised. The PE Teacher report attached to the Discussion section of the *IEP* indicates that the Student has had no major problems in PE this year. It also states that the Student has only missed one day of PE this year (December 5, 2000) due to inappropriate behavior, and that the Complainant was contacted on that date. The PE Teacher's report further states "[Student] has not been denied the right to attend gym class at any other time during this school year."
5. In a memorandum dated February 12, 2001, to the Principal, the PE Teacher wrote "[Student's]

behavior has improved and he always participates in activities.”

6. The local director of special education (the “Director”) reported that the only time the Student has not been allowed to participate in PE was on December 5, 2000, and this was due to his behavior. The Complainant was also contacted and a CCC meeting was subsequently scheduled for December 7, 2000; however, the Complainant canceled the meeting. Three conferences were scheduled and canceled, and the CCC finally met on February 13, 2001.
7. The daily homework/communication log (the “Log”) used for the 2000-01 school year and submitted by the School indicates the following days that the Student has had to spend time in the resource room due to his behavior. On November 16, 2000, the Student spent most of the instructional day in the resource room. On November 29, 2000, the Student spent the afternoon in the resource room. On December 14, 2000, the Student asked to go to the resource room in the morning. On January 9, 2001, the Student spent the morning in the resource room. No other entries indicate that the Student has been sent to the resource room due to his behavior.
8. The Log indicates that the Student was sent either to the Principal’s office or the main office due to his behavior on the following days. On December 1, 2000, the Student was sent to the Principal’s office. On December 5, 2000, the Student was sent to the office at 9:45, and stayed until approximately 10:30, resulting in his missing PE. On December 6, 2000, the Student was sent to the office on two separate occasions. No other entries indicate that the Student has been sent to the Principal’s office or the main office due to his behavior.
9. The Director reported that the Student has not been denied access to lunch. He has, however, on approximately five occasions had to have his lunch in a room adjacent to the cafeteria. This room is used as a resource room, but during lunch it is used for any student that needs a lunch detention, including general education students.
10. The Director reported that what the Complainant has referred to as recess is actually an activity period. If students do not finish their work, they finish it prior to participating in the activity period. The Student’s general education teacher remembered only one to two times in the fall that she actually had the Student complete work prior to participating in the activity period.
11. The Complainant stated that she would submit her copy of a Log that indicates the days that the Student has not been able to participate in PE, recess, and lunch; however, it was never submitted to the complaint investigator.

CONCLUSIONS:

1. Finding of Fact #3 indicates that the Student’s *IEP* allows for the Student to spend time in the resource room when he becomes unfocused. Findings of Fact #4, #5, #6, #7, #8, #9, #10, and #11 indicate that the Student has not been denied access to recess, PE, and lunch when he has been in the resource room, the Principal’s office or the main office. No violation of 511 IAC 7-27-9(b) has occurred.

The Department of Education, Division of Special Education requires no corrective action based on the Findings of Fact and Conclusions listed above.

